

Attorney Docket No. 5000.142

Patent

Tuttle et al.

Group Art Unit 2811

Serial No. 10/045,766

Filing Date: 01/15/2002¹

Title: PATTERN FOR IMPROVED VISUAL
INSPECTION OF SEMICONDUCTOR DEVICES

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MAR 26 2002
OFFICE OF PETITIONS

DECLARATION OF PHILIP SUMMA

Declarant Philip Summa hereby declares:

1. I am the founding partner of the law firm of Summa & Allan, P.A. Our offices are at 11610 North Community House Road, Suite 200, Charlotte, North Carolina 28277.
2. I am a registered patent attorney (No. 31,573). I have held my registration since 1984. I have worked as a patent attorney continuously since that date, and have worked in patent law firms from September 1983 to date.
3. From September 1983 through May 1997, I served as an associate, director, and shareholder at the specialized intellectual property firm of Bell, Seltzer, Park, & Gibson in Charlotte, NC. In June, 1997, I established my present firm, Summa & Allan, P.A. (originally as a proprietorship and then as a professional corporation named Philip Summa, P.A.), for the purposes of continuing an independent specialized practice of patent law when my former firm decided to merge with a large full service law firm.
4. I am quite familiar with the requirements for obtaining a filing date for a U.S. patent application and of the legal importance of a filing date in many circumstances. Accordingly, our firm uses the Express Mailing procedure on a regular basis to obtain a filing date for new U.S. patent applications. We specifically recognize that in order to obtain a U.S. filing date on the date of deposit, the Express Mail package must be delivered to a USPS facility prior to the last Express Mail pick-up of the day at that facility.
5. Our staff is likewise familiar with these requirements and they have the normal responsibility of carrying Express Mail packages (as well as our regular mail) to

¹ This is part of a Petition under 37 C.F.R. 1.10(d) to establish October 23, 2001 as the filing date ("the Petition").

USPS facilities prior to the last Express Mail pick-up of the day at the facilities where they make these deposits.

6. There are six attorneys in our firm, but I am the author of application Serial No. 10/045,766. On October 22, 2001, and following the usual steps of drafting the application and forwarding it to the inventors for review, I received an e-mail from David Hall, Associate General Counsel at Cree, Inc., the inventors' employer, instructing me to file the application (based on the last version he had reviewed) without signatures; i.e. prior to including the Declaration And Power Of Attorney.

7. I printed a copy of the e-mail and gave it to my paralegal, Molly Federal, with a handwritten note instructing her that I wanted to finalize and file the application the next day. October 22, 2001 was a Monday, and October 23, 2001 was a Tuesday.

8. On October 23, 2001 I signed the formal transmittal materials and prepared and signed a check for the filing fee, after which Ms. Federal mailed the application to the Patent Office using the Express Mail procedure.

9. Several years ago, as part of our Express Mailing procedure, we obtained a corporate account for Express Mail. This enables us to ensure that each Express Mail package has the proper postage. We have been assigned a USPS corporate account number (X282886), and we use our corporate account label in place of postage on each Express Mail package. This ensures that each package automatically includes the correct postage. Accordingly, I can confirm that Express Mail packages from our office always include such label for completing the proper postage. The USPS sends us a monthly statement for the postage due, which we pay to them by check.

10. All of our staff are familiar with the requirements of Express Mailing, and all are trained and experienced patent legal secretaries or paralegals.

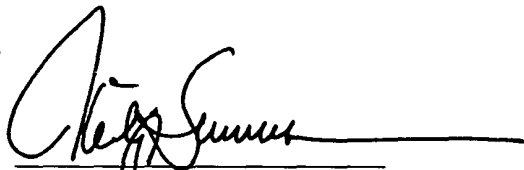
11. All of our staff are familiar with the legal ramifications of obtaining a filing date, and of the further necessity of making sure that a filing date is obtained by depositing

Express Mail packages containing new patent applications at an appropriate USPS facility prior to the last Express Mail pickup for that day at the facility being used for the deposit.

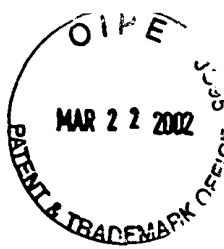
12. Accordingly, it is our routine practice on every business day for one of our three staff members to take any Express Mail packages to a USPS facility and deposit them there prior to the last pickup of the day for Express Mail packages at that facility.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

This 22nd day of March 2002.



Philip Summa



Attorney Docket No. 5000.142

Patent

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DECLARATION OF MARY V. FEDERAL

OFFICE OF PETITIONS

Declarant Mary V. Federal hereby declares:

1. My name is Mary V. Federal ("Molly"). I am a patent paralegal, employed by Summa & Allan, P.A., 11610 North Community House Road, Suite 200, Charlotte, North Carolina 28277.

2. I have over 29 years' experience working for patent attorneys, first as a secretary and then as a paralegal.

3. From August 1972 until June of 1997, I was employed by the law firm of Bell, Seltzer, Park & Gibson in Charlotte, North Carolina. Initially, I was a secretary reporting to Joell T. Turner; subsequently, I reported to Paul B. Bell, the senior member of the firm, as his personal secretary for approximately 9 years.

4. In July of 1984, I applied for and was transferred to the position of Patent Paralegal at Bell, Seltzer, Park & Gibson, where I remained until I left their employ in June 1997. My main responsibilities in that position included, but were not limited to, assisting the firm's attorneys in the preparation and filing of foreign patent applications (nationally, under the Patent Cooperation Treaty, and in the European Patent Office).

5. I left Bell, Seltzer, Park & Gibson on June 13, 1997, and began working for Philip Summa, Reg. No. 31,573, in his independent law practice on June 23, 1997, as his patent paralegal, and continued in this position for the successor firms Philip Summa, P.A., and Summa & Allan, P.A. In this capacity, I have continued to prepare and file foreign patent applications and I have also assisted in the preparation and filing of numerous U.S. patent applications. Summa & Allan is also a specialized patent law firm.

¹ This is part of a Petition under 37 C.F.R. 1.10(d) to establish October 23, 2001 as the filing date ("the Petition").

6. I am familiar with various Express Mail filing procedures and I am specifically familiar with the procedures and requirements for filing a new U.S. utility patent application using Express Mail to obtain the Express Mail deposit date as the application's filing date.

7. On October 22, 2001, after completing the revisions to the patent application, Mr. Summa gave me the application so that I could prepare the required Utility Patent Application Transmittal Sheet, Fee Calculation Sheet, return postcard, and Express Mail label, for filing. He attached a memo with a notation, "10/22/01 Let's file this on Tuesday."

8. On October 23, 2001, upon completion of these documents, I gave them to Mr. Summa for his final review and signature. The signed documents and our check No. 3656 for the filing fee were then placed in an Express Mail envelope, bearing label No. EL921582080US (which I had prepared) and the envelope was then sealed. The label included our return address and was addressed to, "Asst. Comm'r for Patents, Box Patent Application, Washington, DC 20231" (Exhibit 7).

9. In 1997, Mr. Summa had established an Express Mail Corporate Account (No. X282886) with the United States Postal Service (USPS). Accordingly, we placed appropriate postage on the package by affixing a USPS Express Mail Label 108, indicating "postage and fees paid," which together with our Express Mail Corporate Account No. X282886, printed on the Express Mail label, ensured proper postage.

10. As is my practice, I made a copy of the Express Mail label, the return postcard, and the check for filing fees and placed it in a file labeled "Express Mail & Courier Receipts," so that I could reconcile the Express Mail Corporate Account statement upon receipt from the Post Office.

11. Apparently, because of the decontamination processing of mail being sent to the PTO, there were several Express Mail packages which our firm had sent to the PTO, but for which we had not yet received our usual confirmation, such as our return postcard or an Express Mail label (*i.e.*, the carbon copy). On November 13, 2001, in order to determine the status of these packages, I phoned the telephone number listed on an Express Mail Label for tracking a package.

12. In this case, after calling the tracking number, the USPS confirmed that the Post Office had received the package on October 23, 2001. I then made a notation on the copy of the Express Mail label, "11-13-01 PO shows it rec'd this on 10-23-01. No further info."

13. On November 26, 2001, after I again phoned the USPS tracking number, I made the notation "11-26-01 no info" on the copy of the Express Mail label.

14. On February 7, 2002, we received the return postcard for this application from the PTO, and I noted that the filing date was shown as 01/15/2002. Because we had not received the Express Mail label back from the USPS and I knew documentation would be needed as evidence of our mailing the package on October 23, 2001, I again called the USPS tracking service in order to obtain such documentation. Because the package had been delivered by that time, the document sent to me by the USPS reported the date the package had been delivered, but not showing when it had originally received the package. Twice again I requested documentation showing the mailing date, and twice again received the same documentation showing only the delivery date. I then spoke with a supervisor at the tracking service and was told I needed to contact the Express Mail facility in Charlotte, NC, to get the requested documentation. I spoke with a USPS employee in that office and requested documentation of the fact that the USPS had possession of the package on October 23, 2001. On February 13, 2002, I received in the mail a document headed "Product Tracking System; Label Event Details," which shows Express Mail label No. EL921582080US was "ENROUTE" in Charlotte, NC on 10/23/2001 at 19:28. This is included as Exhibit 8 to the Petition.

15. To obtain further evidence of the mailing date, I went to the USPS website (USPS.com) and printed the Shipment History for Express Mail label No. EL921582080US, which also showed the package "ENROUTE, October 23, 2001, 7:28 pm" (Exhibit 9 to the Petition).

16. During the period in question (October 2001), I was one of three staff members at Summa & Allan P.A. The others are Dyane Vaughan and Andie Crumpler. All three of us are familiar with the Express Mailing requirements for obtaining a filing date for a U.S. patent application on the date of Express Mailing deposit.

17. Accordingly, on any given day, one of the three of us will check the mail and make sure that we leave this office early enough to deposit any Express Mail packages in an appropriate Post Office prior to the last deposit pickup of the day at that office.

18. The majority of our deposits are made at the Ballantyne Branch Post Office, which is about a mile from this office.

19. Alternatively, I have made regular mail deposits on my way home at a mailbox located in the Tower Place Shopping Center on Pineville-Matthews Road, Charlotte, NC, and at the Carmel Road Branch Post Office, on Carmel Road, Charlotte, NC.

20. When I leave the office before 4:30 p.m., all of my Express Mail deposits are made at the Ballantyne Post Office before its 5 p.m. closing. If I leave the office after 4:30 p.m., however, and have an Express Mail package which needs to receive that day's date as its mailing date, I deliver it to the USPS facility at the Charlotte Douglas International Airport which has a 24-hour receiving facility. Express Mail packages delivered to that facility as late as 11:59 p.m., will receive that day's mailing date. When I take an Express Mail package to the airport facility, I always hand it to an agent, wait for him to complete the "Date In," and then obtain from him the customer copy of the Express Mail receipt.

21. Accordingly, we have always been able to make appropriate Express Mail deposits, and I am unaware of any failure to obtain a U.S. filing date based on any lack of conformity to the procedures I have outlined.

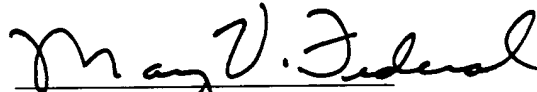
22. In checking the firm's records, it appears that the Express Mail package in question was the only Express Mail package mailed by the firm on October 23, 2001. Therefore, in all likelihood, I personally delivered the package to the Ballantyne Branch Post Office.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States

Tuttle et al.
Serial No. 10/045,766
Page 5

Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

This 22nd day of March 2002.


MARY V. FEDERAL

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Attorney Docket No. 5000.142

PATENT

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Serial No. 10/045,766

Filing Date: 01/15/2002¹

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INSPECTION OF SEMICONDUCTOR DEVICES

DECLARATION OF ANDREA B. CRUMPLER

Declarant Andrea B. Crumpler hereby declares:

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1. My name is Andrea B. Crumpler ("Andie"). I am a patent legal secretary, employed by the Law Firm of Summa & Allan, P.A. at 11610 North Community House Road, Suite 200, Charlotte, North Carolina 28277.

2. I have approximately 13 years' experience working as a legal secretary for Patent Attorneys.

3. From February 1989 through October 1999, I was employed by the patent law firm of Bell Seltzer, Park & Gibson in Charlotte, North Carolina. During these years I supported several different attorneys, but at all times my duties included the preparation and finalizing of patent applications for filing in the United States Patent and Trademark Office, including the preparation of appropriate transmittal materials and Express Mail labeling, packaging, and deposit.

4. During this time, and continuing to date, I have learned and maintain a current awareness of the importance of a specific filing date for U.S. patent applications, as well as the Express Mailing procedures for obtaining such a filing date, *i.e.*, by properly preparing and timely depositing Express Mail packages from a law office to the USPTO.

5. In November, 1999, I applied for and received a position as a patent legal secretary at the law firm of Philip Summa (then a proprietorship) and its successor organization Philip Summa, P.A., now renamed as Summa & Allan, P.A. As part of my present responsibilities, I support two patent attorneys, one of whom works extensively in the area of patent preparation and prosecution. Accordingly, I continue to use the Express Mail procedure, and remain familiar

¹ This is in support of a Petition under 37 CFR 1.10(d) to establish October 23, 2001, as the filing date for this application.

with the requirements for such packages, and for their proper and timely deposit with the USPS in order to obtain a filing date on the date of deposit.

6. During the period in question (October 2001), I was one of three staff members at Summa & Allan, P.A. The others were (and are) Mary V. Federal and Dyane Vaughan. All three of us are familiar with the Express Mailing requirements for obtaining a filing date for a U.S. patent application on the date of Express Mailing deposit.

7. Accordingly, on any given day, one of the three of us will check the mail and make sure that we leave this office early enough to deposit any Express Mail packages in an appropriate Post Office prior to the last deposit pickup of the day at that office.

8. The majority of our Express Mail deposits are made at the Ballantyne branch Post Office which is about a mile from this office, and I personally use the Ballantyne branch whenever I deposit an Express Mail package.

9. Alternatively, I have made deposits of regular mail on my way home at the Fort Mill, South Carolina, Post Office, but I never make Express Mail deposits of new U.S. applications in Fort Mill.

10. In all cases, I make sure that the Express Mail packages are received at the Ballantyne Post Office prior to the last pickup of the day, which is 5:00 p.m. at the Ballantyne Post Office.

11. Because we are familiar with Express Mailing requirements, and if any question arises about our ability to deliver a given package to the Ballantyne branch prior to 5:00 p.m., we make arrangements to carry the Express Mail packages to the USPS facility at the Charlotte Douglas International Airport which has a 24-hour receiving facility and at which we can make sure that we obtain a date of deposit.

12. Accordingly, we have always been able to make appropriate Express Mail deposits on the desired dates, and I am unaware of any failure to obtain a U.S. filing date based on the Express Mail deposit date based on any lack of conformity to the procedures I have outlined.

Tuttle et al.
Serial No. 10/045,766
Filing Date: 01/15/2002
Page 3

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

This 22 day of March 2002.


ANDREA B. CRUMPLER



Attorney Docket No. 5000.142

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DECLARATION OF PATRICIA D. VAUGHAN

Declarant Patricia D. Vaughan hereby declares:

1. My name is Patricia D. Vaughan ("Dyane"). I am a patent legal secretary, employed by the Law Firm of Summa & Allan, P.A. at 11610 North Community House Road, Suite 200, Charlotte, North Carolina 28277.
2. I have approximately 30 years of experience as a legal secretary.
3. From about March 1997 through May 2000, I was employed by Kennedy Covington Lobdell & Hickman in Charlotte, North Carolina. During these years I supported several different attorneys, but at all times my duties included the preparation and finalizing of patent applications for filing in the United States Patent and Trademark Office, including the preparation of appropriate transmittal materials and Express Mailing labels and packages.
4. During this time, and continuing to date, I have learned and maintain a current awareness of the importance of obtaining a specific filing date for U.S. Patent Applications, as well as the Express Mailing procedures for obtaining such specific filing date, *i.e.*, by properly preparing and timely depositing Express Mailing packages from a law office to the USPTO.
5. In May 2000, I applied for and received a position as a patent legal secretary at the law firm of Philip Summa (then a proprietorship) and its successor organization Philip Summa, P.A. and now renamed as Summa & Allan, P.A. As part of my present responsibilities, I support several patent attorneys, two of whom work extensively in the area of patent preparation and prosecution. Accordingly, I have continued to use the Express Mailing procedure, and remain familiar with the requirements for such packages, and for their proper and timely deposit with the USPS in order to obtain a filing date on the date of deposit.

6. During the period in question (October 2001), I was one of three staff members at Summa & Allan P.A. The others are Mary V. Federal and Andie Crumpler. All three of us are familiar with the Express Mailing requirements for obtaining a filing date for a U.S. patent application on the date of Express Mailing deposit.

7. Accordingly, on any given day, one of the three of us will check the mail and make sure that we leave this office early enough to deposit any Express Mailing packages in an appropriate Post Office prior to the last deposit pickup of the day at that office.

8. The majority of our mail deposits (regular and Express Mail) are made at the Ballantyne branch Post Office which is about a mile from our office.

9. Alternatively, I have made deposits of regular mail on my way home at the Indian Trail, NC Post Office.

10. I never make Express Mail deposits at Indian Trail, however, and instead make all of my Express Mail deposits at the Ballantyne Post Office. Prior to May 2001, when the law firm moved to its present location, we may have occasionally made a mid-day Express Mail deposit at an Express Mail box on John J. Delaney Drive (Charlotte, NC 28277), which was literally across the street from our prior location. The John J. Delaney Drive box is no longer convenient to our present location, however, and thus we no longer use it.

11. In all cases, I make sure that the Express Mailing packages are received at the Ballantyne Post Office prior to the last pickup of the day, which is 5 p.m.

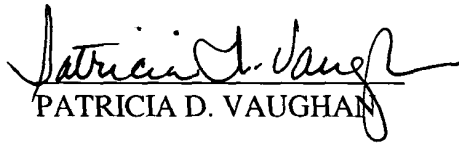
12. Because we are familiar with Express Mailing requirements, and if any question arises about our ability to deliver a package to an appropriate local Post Office branch, we make arrangements to carry the Express Mail packages to the USPS facility at the Charlotte Douglas International Airport which has a 24-hour receiving facility and at which we can make sure that we obtain a date of deposit.

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13. Accordingly, we have always been able to make appropriate Express Mail deposits, and I am unaware of any failure to obtain a U.S. filing date based on any lack of conformity to the procedures I have outlined.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

This 22nd day of March 2002.


PATRICIA D. VAUGHAN